STATE OF INDIANA	) ) ss:	IN THE ELKHART SUPERIOR COURT NO. 2
COUNTY OF ELKHART	)	CAUSE NO. 20D02-0207-CC-478
STATE OF INDIANA,		)
Plaintiff,		)
v.		) FILED ) IN OPEN COURT
MICHAEL G. HORNE,		APR 2.5 2003
Defendant.		CLERK ELKHART SUPERIOR COURT NO. 2

## **OPINION**

COMES now the Court on the State of Indiana's Motion for Summary Judgment pursuant to T. R. 56, and having read and considered the arguments of counsel and the materials submitted on behalf of an in opposition to said Motion now GRANTS Plaintiff's Motion.

On November 8, 1995, the State of Indiana recovered a judgment against the Defendant in the amount of \$21,358.00 in the United States Bankruptcy Court, Northern District of Indiana, South Bend Division, Indiana in an action entitled: In the Matter of State of Indiana, Plaintiff v. Michael George Horne, Defendant, Case No. 94-32664-RKR (Chapter 7) and Adversary Proceeding Cause No. 95-3005. The judgment was obtained by consent from the Defendant. The Consent Judgment provided that the judgment amount of \$21,358.00 was to be paid in weekly installments of \$100.00 for a period of 214 weeks. In addition, the judgment contained a default provision which would take effect if the Defendant failed comply with the terms of the Consent Judgment. The default provision states:

"If Defendant, Michael G. Horne, fails to make any weekly payment, and if a demand notice has been sent to his last known address, and if Defendant fails to respond to the notice and cure the deficient amount fifteen (15) days after the date the demand notice is sent, then Defendant shall be declared in default and Plaintiff shall be entitled to a judgment in the total amount of all consumer claims (\$51,932.54), plus ten percent (10%) interest from entry of this judgment, plus costs of investigation and prosecution

(\$2,375.00)."

The Defendant has failed to make any weekly payment since October 26, 1998. On December 3, 1999, the State of Indiana mailed a demand letter to the Defendant's last known address seeking payment of the arrearage. The Defendant did not pay the arrearage and has not made any further payment toward the judgment.

Plaintiff seeks to have this Court recognize and adopt as its own the Consent Judgment obtained in the United States Bankruptcy Court. Plaintiff further seeks to have this Court find the Defendant in default under the Consent Judgment. The Defendant responds by stating that his failure to pay was not willful, and therefore, should not be treated as a default under the Consent Judgment.

The Court finds that no genuine issue of material fact exist and that judgment in this matter may be entered as a matter of law. Pursuant to Indiana Code Section 34-39-4-2 and Trial Rule 44(A), the Court hereby recognizes the Consent Judgment of the United States Bankruptcy Court entered in the action entitled: In the Matter of State of Indiana, Plaintiff v. Michael George Horne, Defendant, Case No. 94-32664-RKR (Chapter 7) and Adversary Proceeding Cause No. 95-3005, as a valid judgment entitled to full faith and credit. Furthermore, the Court adopts that Judgement as its own. Finally, the Court finds the Defendant in default under the express terms of the Consent Judgement.

THEREFORE, it is hereby ordered, adjudged and decreed that Plaintiff's Motion for Summary Judgment is granted; Plaintiff ordered to tender form of Judgment.

SO ORDERED:	
Date:	
	The Honorable Stephen E. Platt
	Judge, Elkhart Superior Court No.2